

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.2.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) No.124 of 2000

The Income Tax Officer,
City Circle II(6), Chennai ... Appellant

Vs.

M/s.Sunshine Enterprises,
No.9, Vijaya Raghava Road,
T.Nagar, Chennai-17 ... Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 11.11.1998 in ITA No.2626/Mds/1991 for the assessment year 1989-90 against the Order dated 8.8.91 on the file of the Commissioner of Income Tax (Appeals) VI, Madras and against the Order dated 26.12.90 on the file of the Income Tax Officer, City Ward II(6), Madras 6.

For Appellant : Mrs.Pushya Sitaraman,
Senior Standing counsel

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal dated 11.11.1998 made in ITA No.2626/Mds/1991, raising the following substantial question of law.

"Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in law in holding that the assessee was entitled to deduction under Section 80 HHC of the Income Tax Act, 1961?".

2. The brief facts leading to the filing of the above appeal are as under.

2.1. The assessee firm is engaged in the business of manufacturing and exporting granites. It has filed its return on 30.11.1989 admitting an income of Rs.5,01,790/-. The assessee claimed relief under Section 80HHC for the A.Y.1989-90 claiming that the activity of excavating granite blocks, cutting and polishing them with the help of machines, amounts to manufacture or production of an article or thing. The assessing officer turned down the claim of the assessee. Hence, the assessee went on appeal before the Appellate Commissioner of Income Tax, who, decided the issue in favour of the assessee by following the earlier decisions of the Tribunal.

2.2. Aggrieved by the order of the Appellate Commissioner of Income Tax, the Revenue preferred an appeal before the Appellate Tribunal, which, confirmed order of the Commissioner of Income Tax (Appeals). Hence, the Revenue preferred the above appeal.

3. Heard the learned Senior Standing counsel appearing for the appellant, who states that the issue involved in this appeal is answered in favour of the Revenue by this Court in COMMISSIONER OF INCOME TAX VS. POOSHYA EXPORTS P. LTD., (262 ITR 417), which has been confirmed by the Supreme Court in GEM GRANITES V. COMMISSIONER OF INCOME TAX (271 ITR 322).

4. There is no dispute that granite is covered by the word 'minerals' in the exclusionary clause (b) of sub-section (2) of Section 80HHC. It would follow that for the un-amended section 80HHC(2)(b) 'cut and polished' granite would also be a mineral. The word 'mineral' as used in sub-section (2)(b) to section 80HHC has been widely discussed by the Supreme Court in STPMECRAFT ENTERPRISES (237 ITR 131), wherein it has been held that:

"The word 'minerals' in sub-section (2)(b) of section 80HHC must be read in the context of 'mineral oil' and 'ores' with which it is associated. It seems to us that these words taken together are intended to encompass all that may be extracted from the earth. All minerals extracted from the earth, granite included must, therefore, be held to be covered by the provisions of sub-section (2)(b) of Section 80HHC, and the exporter thereof, is therefore, dis-entitled to the benefit of that Section."

It is further held therein that:

"There are no words of restriction which qualify the word 'minerals' and it would be reasonable to assume that in the absence of any such limitation, the word must be read to include all kinds of minerals in all its forms, i.e. whether subjected to any process or not as long as it continued to retain the characteristics of the mineral. To hold that the word 'minerals' never included processed minerals would require our reading words of limitation into an otherwise clear and unambiguous statutory

provision."

5. This Court in COMMISSIONER OF INCOME TAX VS. POOSHYA EXPORTS P. LTD., (262 ITR 417), following the dictum referred to above, held that in the absence of any particulars on record to construe that the exported granites are value added, the assessee is not entitled to the benefit under Section 80HHC of the Act.

6. The above said decision of this Court has been affirmed by the Supreme Court in GEM GRANITES V. COMMISSIONER OF INCOME TAX (271 ITR 322), wherein the Supreme Court has elaborately discussed the assessee's entitlement of benefit under Section 80HHC towards 'cut and polished' granites on the basis of the Board's circulars, which reads as follows:

"It is clear from the language used in Circular F.No.178/206/83-IT(A-I), dated May 22, that the CBDT gave its understanding of section 80HHC(2)(b) as it stood prior to the 1991 amendment with regard to diamonds and gem stones having regard to the peculiar facts and features relating to the export and import of diamonds. The circular contains no reference to granite and one cannot extend the understanding of the Board with regard to exclusion of cut and polished diamonds and gem from the word 'minerals' to granite in the absence of the special features mentioned in the 1984 circular, more so when the statute itself had not drawn such distinction.

The 1994 and 1995 circulars both relate to the interpretation of item No.(x) in Schedule XII and are confined to an exposition of the phrase 'cut and polished' used in that item. They do not seek to interpret the word 'minerals'. The 1994 circular clarified that the phrase 'cut and polished' minerals meant exactly that and could not be extended to any other process. The 1995 circular modified the rigour of the 1994 circular to the extent that it recognized some other process as falling within the phrase 'cut and polished'. Board circulars clearly state that the benefit of Section 80HHC was available to cut and polished granite only with effect from April 1, 1991, by virtue of the insertion of item No.(x) in Schedule XII.

7. In view of the forgoing conclusion, we hold that the assessee which exported granite after being cut and polished, was not entitled to claim the deduction under Section 80HHC of the Income-tax Act, 1961, in respect of the profits from the export business for the assessment year 1988-89. Accordingly, the order of the Tribunal is set aside and the question of

law is answered in favour of the Revenue and the appeal is allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar,
Chennai 90.(with records).

2. The Secretary,
Central Board of Direct Taxes,
New Delhi.

3. The Commissioner of Income Tax(Appeals),
VI Besant Nagar, Chennai 90.

4. The Commissioner of Income Tax,
Tamil Nadu II Besant Nagar, Chennai 90.

5. The Income Tax Officer,
City Circle II (6), Madras.

+ 1 CC to M/s.Pushya Sitaraman, Advocate SR NO 8356

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